

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KERRY KOTLER,

Plaintiff,

v.

9:06-CV-1308 (NAM/DEP)

**JOHN DONELLI, Superintendent, Bare Hill Correctional
Facility, L. JUBERT, Deputy Superintendent of Security,
W. DANN, Correction Sergeant, DARWIN DAILY and
DAVID CHARLAND, Correction Officers,**

Defendants.

APPEARANCES:

Kerry Kotler
97-A-6645
Fishkill Correctional Facility
P.O. Box 1245
Beacon, New York 12508
Plaintiff *pro se*

Green & Seifter Attorneys PLLC
James L. Sonneborn, Esq., of counsel
Harrison V. Williams, Jr., Esq., of counsel
One Lincoln Center, Suite 900
Syracuse, New York 13202-1387
Standby Trial Counsel for Plaintiff

Office of the Attorney General, State of New York
James B. McGowan, Esq., of counsel
Roger W. Kinsey, Esq., of counsel
State of New York
The Capitol
Albany, New York 12224
Attorneys for Defendants

Hon. Norman A. Mordue, Seniro United States District Judge:

MEMORANDUM-DECISION AND ORDER

Defendants filed and served a written notice of the death of defendant John Donelli on

August 21, 2013 (Dkt. No. 117). No party moved for substitution of the decedent's successor or representative, nor did any party move under Fed. R. Civ. P. 6(b) to enlarge the time in which to file a motion for substitution. *See Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 470 (2d Cir. 1998). On November 22, 2013, more than 90 days after service of the notice, United States Magistrate Judge David E. Peebles issued a Report and Recommendation (Dkt. No. 118) recommending dismissal of all claims against Donelli pursuant to Fed. R. Civ. P. 25(a).

Plaintiff has filed a *pro se* objection to the Report and Recommendation. (Dkt. No. 121). Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews *de novo* those parts of a report and recommendation to which a party specifically objects. Plaintiff asserts that the notice is "materially insufficient on its face" because it "contains neither the name of the executor or executrix to the Donelli estate, nor any contact information for him or her." Plaintiff asks the Court to direct counsel for the surviving defendants "to investigate the status of Donelli's estate, and provide a proper Suggestion of Death that identifies his representative, and that if that information can not be obtained, to submit a declaration describing the efforts made to do so."

It is well established that Rule 25 does not require that a statement of death "identify the successor or legal representative; it merely requires that the statement of death be served on the involved parties." *Unicorn Tales*, 138 F.3d at 470. Accordingly, upon *de novo* review, the Court accepts the Report and Recommendation and dismisses all claims against Donelli.

It is therefore

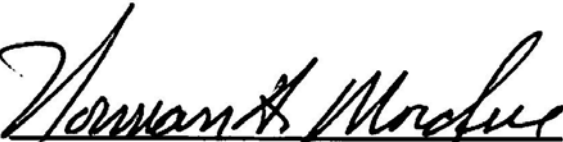
ORDERED that the Report and Recommendation (Dkt. No. 118) is accepted; and it is further

ORDERED that all claims against John Donelli are dismissed; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York, on both the *pro se* plaintiff and stand-by trial counsel, as well as defendants' counsel.

IT IS SO ORDERED.

Date: December 20, 2013


Norman A. Mordue
Senior U.S. District Judge

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